

REMARKS

Applicant has added claims 15-16. Claims 8-16 are currently pending in this application. Applicant hereby states that the substitute specification filed July 1, 2002 includes no new matter and respectfully requests the specification to be entered.

In the Office Action, the Examiner objected to the drawings under 37 CFR 1.83(a), and the Examiner objected to claim 10 due to an informality. The Examiner rejected claims 8-14 as being unpatentable over 35 U.S.C. § 112. The Examiner rejected claims 8 and 10 as being unpatentable over 35 U.S.C. § 102: claim 8 as being anticipated by S.E. Bates, U.S. Patent No. 1,880,672 (henceforth Bates) and claim 10 as being anticipated by Stokes, U.S. Patent No. 2,907,410 (henceforth Stokes). The Examiner further rejected claims 8, 11 and 14 under 35 U.S.C. § 103: claim 8 as being unpatentable over Moore, U.S. Patent No. 2,173,654 (henceforth Moore) in view of Bates, claim 11 as being unpatentable over Stokes in view of Bates, and claim 14 as being unpatentable over Stokes in view of the Examiner's Official Notice.

Applicant has amended claims 8-13. The foregoing amendments and the following remarks are considered by Applicant to overcome each of the Examiner's outstanding rejections.

The Examiner objected to the drawings because the depression (one) recited in claim 11 was not shown. Applicant has amended claim 11, removing the one depression. Thus, the Examiner's objection has been addressed.

The Examiner objected to claim 10 because it was not clear whether claim 10 is an independent claim or a dependent claim. Claim 10 has been amended to clarify that it is a dependent claim dependent on claim 8. Therefore, the ambiguity has been removed from the claim, and the Examiner's objection has been addressed.

The Examiner rejected claims 8-14 under 35 U.S.C. § 112, second paragraph, as being indefinite. The Examiner objected to using the language "particularly" in claims 8 and 10-12, the phrase "the open-edged cutouts located opposite one another" and the language "the minimum distance between the open-edges cutouts" in claim 9. The Examiner further objected to the phrases "wherein the bottom plate of the plates that are placed one upon the other", "in the center thereof", "said flow divider communicates,... with flow dividers which are arranged in another plate of the stack of the plates that are placed one upon the other",

“wherein the plate having the additional flow dividers”, and the use of the word “which” in claim 10. The Examiner also objected to the phrase “the other plate” in claims 11-14 and the phrase “the plate” in claims 11-13. Applicant has amended these claims to remove the ambiguities.

The Examiner rejected claim 8 as being anticipated by Bates and claim 10 as being anticipated by Stokes under 35 U.S.C. § 102. Applicant respectfully traverses the rejection.

The present invention generally concerns a grooved rail lubricating device for improving the uniformity of the lubricant delivery while preventing clogging to which distributing devices are usually prone. The device, shown in FIG. 4 of the present application by way of example, achieves these goals by using a combination of elongated plates with flow dividers and by delivering the lubricant through open-edged longitudinal cutouts in one of the plates (as recited in claim 8). The resulting improved lubricant delivery is important to the railborne traffic industry, particularly the part of the industry employing grooved rails.

The Bates reference teaches depressions (“conduits”) along the flat surface of the plate—the reference does not teach cutouts that have open edges as recited in claim 8. The Bates depressions are not along the longitudinal edge because the flat side of the elongated plate 8 should not be broadly construed to be the longitudinal “edge.” Neither do the depressions in Bates start at the longitudinal edge—Figure 6 of Bates shows that the depressions 14-20 do not come in contact with the longitudinal edges—the depressions begin and terminate within the flat surface of the plate. Bates also completely covers the depressions so that the lubricant cannot “flow out through the open edges” of the cutouts.

For claim 10, Applicant has amended the language to clarify that it depends on claim 8. Accordingly, Applicant submits that it is patentable by virtue of its dependency from claim 8.

The Examiner rejected claims 8, 11 and 14 under 35 U.S.C. § 103: claim 8 as being unpatentable over Moore in view of Bates, claim 11 as being unpatentable over Stokes in view of Bates, and claim 14 as being unpatentable over Stokes in view of the Examiner’s Official Notice. Applicant respectfully traverses the rejection.

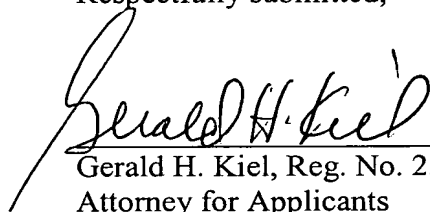
Regarding claim 8, Moore discloses discharging the lubricant upward through gaps 24 as can be seen from the fact that the elongated plate 1 conforms to the shape of the rail (Fig. 2 of Moore) and the “piling up” of the semi-stiff lubricant 26-27 (same Figure). Combining

Moore's device with a cover plate, covering the device on top of the gaps, would render the device inoperable because the lubricant would not be able to "flow out through the open edges" as recited in claim 8.

Dependent claims 9-16 are all dependent on amended claim 8. Applicant submits that, as such, claims 9-16 are patentable by virtue of their dependence from independent claim 8, which is believed by the Applicant to define patentable subject matter.

Based upon the above amendments and remarks, Applicant respectfully requests reconsideration of this application and its earlier allowance. Should the Examiner feel that a telephone conference with Applicant's attorney would expedite the prosecution of this application, the Examiner is urged to contact him at the number indicated below.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gerald H. Kiel", is written over a horizontal line.

Gerald H. Kiel, Reg. No. 25,116
Attorney for Applicants

Reed Smith LLP
599 Lexington Avenue
New York, NY 10022
Tel. No.: (212) 521-5400
Fax No.: 212-521-5400